

**Application No.: 10/596,482**  
**Filing Date: August 27, 2007**

## **REMARKS**

Applicant respectfully requests reconsideration in view of the following remarks.

*Claims 3, 5 and 8 Have Been Amended*

Applicant has amended Claims 3, 5 and 8 to address minor informalities. No new matter is added and entry of these amendments are respectfully requested.

*Claims 2 and 6 Comply with 35 U.S.C. § 112, Second Paragraph*

Claims 2 and 6 stand rejected under 35 U.S.C. § 112, second paragraph.

The Office Action argued relative to Claim 2 that the term “the temperature” is indefinite because the claim did not establish the element whose temperature is being monitored. The Office Action also explained relative to Claim 6 that a proper Markush group uses the language “consisting of.”

Claim 2 largely has been incorporated into Claim 1 and Claim 1 recites that the temperature is the temperature of a fluid contained in the hydrostatic drive assembly. Accordingly, Applicant submits that the rejection of Claim 2 has been overcome.

Claim 6 has been amended to replace “comprising” with the term “consisting of.” Accordingly, Applicant submits that the rejection of Claim 6 has been overcome.

Reconsideration and withdrawal of these two rejections are respectfully requested.

*Claim 1 is Patentable*

Claims 1, 5, 6 and 10 have been rejected under 35 U.S.C. § 102(b) as anticipated by Ohshita (U.S. Patent No. 5,873,428). Claims 2-4 and 7-9 have been rejected under 35 U.S.C. § 103(a) as being unpatentable over Ohshita in view of Ward (U.S. Patent No. 3,770,076). Applicant respectfully disagrees.

Claim 1 has been amended to recite at least some of the limitations of Claim 2. As amended, Claim 1 recites, among other limitations, a bridging duct positioned along the hydrostatic line system, a unit arranged in the bridging duct and provided with temperature-sensitive members that connect and disconnect the bridging duct in proportion to a temperature of a fluid contained in the hydrostatic drive assembly to wholly or partially bridge or disconnect or reconnect the hydrostatic drive assembly.

Ohshita discloses an assembly featuring a pressure regulating bypass line 44 that extends between the high pressure side and the low pressure side. The bypass line 44 contains a

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backpressure-regulating pressure relief valve 46. Contrary to the proportional system recited by Claim 1, the valve 46 of Ohshita opens fully as soon as a pressure exceeds the pressure allowed by the valve 46. Thus, the valve 46 of Ohshita is digital in nature; the valve either is fully open or fully closed.

Furthermore, Claim 1 recites a unit with temperature-sensitive members that connect and disconnect the bridging duct in proportion to a temperature of a fluid contained in the hydrostatic drive assembly. As acknowledged in the Office Action, Ohshita does not disclose a unit that controls a bridging duct based on temperature.

For at least these reasons, Claim 1 is not anticipated by Ohshita.

Claims 5, 6 and 10 depend from Claim 1 and are not anticipated by Ohshita for at least the same reasons that Claim 1 is not anticipated by Ohshita.

*Claim 1 is Patentable Over Ohshita Combined with Ward*

Claim 2, which was rejected under 35 U.S.C. § 103(a) as obvious over Ohshita in view of Ward (U.S. Patent No. 3,770,076), has been incorporated into Claim 1. Applicant submits that Claim 1 is patentable over the combination applied against Claim 2.

As discussed directly above, Oshita discloses a pressure-based system in which flow would be diverted through the pressure relief valve when the pressure on the high pressure line exceeded a predetermined maximum pressure. *See Ohshita, Col 3, lines 30-36.* The Office Action argues that Ward teaches a hydrostatic drive assembly having a unit 11 provided with temperature sensitive members and members that connect and disconnect a bridging duct based on the temperature of the fluid (Figure 2). The Office further argues it would have been obvious to modify the system of Ohshita to include a temperature-sensitive unit taught by Ward to prevent overheating of the fluid.

It is unclear from the Office Action whether this modification would replace the pressure relief valve 44 of Ohshita or be in addition to the pressure relief valve 44 of Ohshita. Nevertheless, such a combination would not have been obvious to one of ordinary skill in the art.

Ward discloses a system that is designed to maintain a substantially constant operating temperature of a fluid independent of climatic conditions. *Ward, Col 1, lines 22-25.* The valve 11, which is shown in Figure 2 of Ward, is used to adjust flow from a single inlet 15 between two different outlets 12, 13. *Ward, Col 2, lines 25-27.* As shown in Figure 1, the valve 11 is

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positioned entirely downstream of the location of any drive assemblies and the valve 11 only functions to divert fluid between a cooling tank 4 and a heating tank 5 such that fluid mixed from the two tanks 4, 5 will be an appropriate temperature for use in operating the system.

When the teachings of Ward are considered as a whole, one of ordinary skill in the art would not have been led to place a bridging duct to divert flow away from flowing through the hydrostatic drive assembly. Ward does not teach diverting flow around the hydrostatic drive assembly. Rather, Ward teaches proportioning flow between a hot tank and a cold tank to maintain the operating fluid at a suitable temperature regardless of how hot or how cold the ambient temperature and then flowing the full flow through the hydrostatic motors.

Accordingly, one would not have been led to the recited construction based upon the two combined references. For at least this reason, Claim 1 is patentable over the combination of Ohshita in view of Ward. Reconsideration and allowance are respectfully requested.

Claims 3, 4 and 7-9 also have been rejected under 35 U.S.C. § 103(a) as obvious over Ohshita in view of Ward. Applicant respectfully disagrees and submits the Claims 3, 4 and 7-9 depend from Claim 1 and are patentable over the applied combination for at least the same reasons that Claim 1 is patentable over the applied combination. Reconsideration and allowance of Claims 3, 4 and 7-9 are respectfully requested.

*New Claims Have Been Added*

Claims 11-21 have been added to provide more varied scopes of protection. Claim 11 recites, among other limitations, a hydrostatic pump that is connected to a hydrostatic drive assembly by a high pressure line and a low pressure line, a pressure relief valve connecting the high pressure line and the low pressure line, a bridging duct also extending between the high pressure line and the low pressure line and being positioned to bypass a portion of a flow around the hydrostatic drive assembly and a variable flow controller being positioned within the bridging duct, the variable flow controller being responsive to changes in a sensed characteristic in the hydrostatic transmission and bypassing a portion of the flow through the bridging duct in proportion to changes to the sensed characteristic in the hydrostatic transmission. Neither Ohshita nor Ward teaches such a configuration. Applicant submits that Claim 17 is patentable over the applied references.

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Claims 12-21 depend from Claim 11 and are patentable over the applied references for at least the same reasons that Claim 11 is patentable over the applied references.

Consideration and allowance of Claims 11-21 are respectfully requested.

**No Disclaimers or Disavowals**

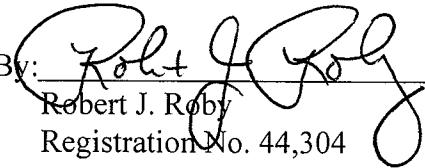
Although the present communication may include alterations to the application or claims, or characterizations of claim scope or referenced art, Applicant is not conceding in this application that previously pending claims are not patentable over the cited references. Rather, any alterations or characterizations are being made to facilitate expeditious prosecution of this application. Applicant reserves the right to pursue at a later date any previously pending or other broader or narrower claims that capture any subject matter supported by the present disclosure, including subject matter found to be specifically disclaimed herein or by any prior prosecution. Accordingly, reviewers of this or any parent, child or related prosecution history shall not reasonably infer that Applicant has made any disclaimers or disavowals of any subject matter supported by the present application.

Please charge any additional fees, including any fees for additional extension of time, or credit overpayment to Deposit Account No. 11-1410.

Respectfully submitted,

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